

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TERRENCE E. TAYLOR, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	
STRUCTURED ASSET FUNDING, LLC, et al.,)	1:15-cv-271
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT

MOTION HEARING

Friday, June 5, 2015

BEFORE: THE HONORABLE T.S. ELLIS, III
Presiding

APPEARANCES: Kathleen Holmes
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(Submissions requested)

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PROCEEDINGS

(Court called to order.)

THE CLERK: Terrence E. Taylor, et al.,
versus Structured Asset Funding, LLC, et al., Civil Case
Number 1:15-cv-271.

THE COURT: All right. Who is here on
behalf of the plaintiffs?

ATTORNEY HOLMES: Good morning, your Honor.
Kathleen Holmes. And may I introduce to the Court
Mr. Edward Stone. Your Honor has admitted Mr. Stone pro
hac vice for this matter.

I would supplement to his application by way
of introduction that Mr. Stone's career in the law has
focused on the structured settlement industry, including
serving as general counsel for J.G. Wentworth and
practicing and participating in the development of the
model structured settlement acts which bear upon this
case.

Your Honor, with permission of the Court,
Mr. Stone will address plaintiff's argument.

THE COURT: All right. He will address
what?

ATTORNEY STONE: Plaintiffs' argument, your
Honor. He will present --

1 THE COURT: Oh, plaintiffs' arguments.

2 Thank you.

3 And for the defendant, Structured Asset
4 Funding and iSettlements, LLC?

5 ATTORNEY ELLEDGE: Good morning, your Honor.
6 Brandon Elledge of Holland & Knight on behalf of those
7 two defendant entities. With me today is my partner,
8 Cory Eichhorn. Mr. Eichhorn also has been admitted to
9 this proceeding pro hac vice.

10 He will be, with your Honor's permission,
11 presenting argument on behalf of those two defendants
12 today. And he similarly has an extensive background in
13 the settlement -- structured settlement industry.

14 THE COURT: Mr. Eichhorn, how do you spell
15 your last name?

16 ATTORNEY EICHHORN: Good morning, your
17 Honor. E-i-c- two h's - o-r-n.

18 THE COURT: Two H's.

19 ATTORNEY EICHHORN: Two h's. It always gets
20 you.

21 THE COURT: All right. And who is here --
22 thank you.

23 Who is here for Blazingstar Funding, LLC?

24 ATTORNEY SPIVEY: Your Honor, Ed Spivey from
25 Kaufman and Canoles here for Blazingstar.

1 THE COURT: All right. It's not William
2 Spivey.

3 ATTORNEY SPIVEY: That is my first name. I
4 go by my middle name, which is Edgar. So I go by Ed.

5 THE COURT: Any relation to Joseph Spivey?

6 ATTORNEY SPIVEY: No, your Honor. I have
7 been asked that question a goodly number of times. I am
8 not related.

9 THE COURT: All right. Thank you.

10 And who is here on behalf of Rhett
11 Wadsworth?

12 ATTORNEY FRANCO: Good morning, your Honor.
13 Craig Franco on behalf of Rhett Wadsworth.

14 THE COURT: All right. Good morning to you.

15 I am reasonably generally familiar with the
16 facts, but let's begin with Mr. Eichhorn, who is the
17 movant, the major movant in this matter, and I'll hear
18 from you to begin with.

19 ARGUMENT BY DEFENDANTS SAF, iSETTLEMENTS

20 ATTORNEY EICHHORN: May it please the Court.
21 Good morning, your Honor.

22 We are here today on a Rule 12(b)(1) and
23 12(b)(6) motion to dismiss. We move to dismiss the
24 complaint on a number of different grounds.

25 At the outset, we move to dismiss the case

1 based on the Rooker Feldman Doctrine, which this Court
2 is familiar with, a doctrine that was decided by a
3 United States Supreme -- two United States Supreme Court
4 cases, Rooker and Feldman, years ago and has been
5 interpreted a number of times by the United States
6 Supreme Court since then.

7 THE COURT: I am fairly familiar with it.
8 Just tell me why you think it applies in this case. It
9 would only apply to Count 1, wouldn't it?

10 ATTORNEY EICHHORN: The argument would apply
11 in --

12 THE COURT: It would only apply to Count 1
13 because there's only a Virginia court order. There are
14 no West Virginia court orders.

15 ATTORNEY EICHHORN: Well, your Honor, the
16 Structured Settlement Protection Act for Virginia
17 requires a court order to be entered in order for a
18 structured settlement assignment transfers to be
19 approved. So for any structured settlement assignment
20 to be approved, a Virginia state court needs to enter an
21 order. And that was done here.

22 THE COURT: And that's Count 1.

23 ATTORNEY EICHHORN: That's Count 1. But all
24 of the counts relate to the underlying state court order
25 that --

1 THE COURT: I know, but you can't -- why
2 would Rooker Feldman operate at all with respect to the
3 West Virginia Count 2, which is the West Virginia
4 statute? I don't see any application by the West
5 Virginia statute at all. Do you?

6 ATTORNEY EICHHORN: Well, I think what, the
7 relief that they are seeking -- and it's difficult to
8 tell based on the complaint, your Honor, but when you go
9 back and look at the relief, paragraph 99 of the amended
10 complaint, which is part of the Count 1, alleges that
11 the court orders that were entered by the Virginia
12 courts should be voided. That is the relief that they
13 are seeking. They then incorporate that claim for
14 relief in every subsequent count, realleging and
15 adopting that count.

16 THE COURT: All right.

17 ATTORNEY EICHHORN: So in every count they
18 are seeking to set aside the Virginia State Court order.

19 THE COURT: All right. Go on with your
20 argument.

21 ATTORNEY EICHHORN: So, your Honor, Rooker
22 Feldman applies here for a number of different reasons.

23 First of all, Mr. Taylor was, within the
24 meaning of the Rooker Feldman Doctrine, a state court
25 loser. The structured settlement process in Virginia is

1 highly regulated. There is a Structured Settlement
2 Protection Act in place. The courts in the Circuit
3 Court follow that Structured Settlement Protection Act,
4 entered orders indicating that the structured
5 settlements were in the best interest of Mr. Taylor,
6 that he was advised of his right to have independent
7 legal advice in the case or waive that right; and also
8 that the underlying transfer did not violate an order or
9 a federal or state statute.

10 So within the meaning of the Rooker Feldman
11 Doctrine, Mr. Taylor is a state court loser because he
12 consented to the relief. He filed affidavits indicating
13 that the transactions were in his best interest. He
14 executed contracts indicating that underlying contracts
15 were in his best interest.

16 So for that reason he should be deemed a
17 state court loser under the first element of Rooker
18 Feldman.

19 There is only one District Court opinion
20 that has addressed the issue. We cited that in our
21 papers, the Capela decision, a United States District
22 Court decision out of the Southern District of New York,
23 that found that under similar circumstances, where a
24 structured settlement seller was attempting to attack
25 orders entered, that that seller, as a federal

1 plaintiff, was a state court loser.

2 In addition, your Honor, the second element
3 of the Rooker Feldman is met. The plaintiff complains
4 of the injuries caused by the state court judgment.

5 When you take a look at the amended
6 complaint, as I indicated, paragraph 99 asks this Court
7 to void the underlying state court orders, clearly
8 complaining of injuries caused by the state court.

9 In additional paragraphs in the complaint he
10 asks for the underlying structured settlement
11 transactions to be rescinded and restored. The only way
12 that that can happen is for the state court orders to be
13 reversed.

14 The purpose of Rooker Feldman is not for
15 this Court to revisit, reinterpret, reexamine what the
16 underlying state courts did, so the second element is
17 met under Rooker Feldman.

18 The third element is that the state court
19 judgment became final before the proceedings in the
20 federal court were commenced. I don't think there is a
21 dispute as to that here.

22 There were seven state court orders entered
23 relative to Defendant Structured Asset Funding and
24 iSettlements, LLC. Those orders were entered prior to
25 this action being commenced earlier this year. From

1 2012 through 2014 those orders were entered. So the
2 third element is met under Rooker Feldman.

3 And the fourth element, again which is
4 closely tied to the second element, is that the
5 plaintiffs have invited this Court to review and reject
6 the state court judgments, which again in paragraph 99
7 they ask this Court to void the state court orders.

8 In paragraph 244 they seek declarations that
9 all transaction are void, and asking the Court to take
10 all steps to rescind the transactions, and also ask the
11 Court to restore the periodic payments back to
12 Mr. Taylor. Again, the only way that can happen is if
13 this Court reverses the underlying state court orders.

14 Under Fourth Circuit precedent, Wilner
15 versus Fray, and also Smalley versus Shapiro and Burson,
16 LLP, this falls within the ambit of the Rooker Feldman
17 Doctrine.

18 It's clearly a case where a state court
19 loser is attempting to revisit and have this Court sit
20 in appellate review over the state court judgment.

21 Again, the Structured Settlement Protection
22 Act that's in place here in Virginia and in place in a
23 number of other different states provides that -- the
24 rights of Mr. Taylor to object at the hearing to approve
25 the structure settlement transactions. Mr. Taylor did

1 not object in this case.

2 Permitting the case to go forward would in
3 essence hold that the state court wrongly decided the
4 issue, which under Rooker Feldman a federal court is
5 prohibited from doing.

6 THE COURT: All right. I am going to take
7 each of these issues one at a time.

8 ATTORNEY EICHHORN: Sure.

9 THE COURT: Under Count 2, I still don't
10 understand why Rooker Feldman has anything to do with
11 Count 2, because there is no state court judgment
12 relating to the West Virginia Structured Settlement
13 Protection Act, is there?

14 ATTORNEY EICHHORN: Judge, there is not a
15 West Virginia structured settlement transfer order that
16 was entered in this case. There --

17 THE COURT: Right. So why would Rooker
18 Feldman -- there may be another reason why that claim
19 fails to state a claim. But why would Rooker Feldman
20 apply to that count, where there is no state court
21 judgment?

22 ATTORNEY EICHHORN: Well, in essence, your
23 Honor, this cause of action seeks to set aside the
24 Virginia State Court transfer.

25 THE COURT: Right. That's Rooker Feldman,

1 in your view.

2 ATTORNEY EICHHORN: That's Rooker Feldman,
3 in my view.

4 THE COURT: Well, why does Rooker Feldman
5 have anything to do with an allegation that it violated
6 the West Virginia Settlement Protection Act? Why isn't
7 that just --

8 ATTORNEY EICHHORN: Well, my understanding
9 of that count, your Honor, is that the relief for that
10 counted is setting aside, rescinding, voiding the
11 underlying Virginia court orders.

12 THE COURT: Yes.

13 ATTORNEY EICHHORN: If that's not what --

14 THE COURT: That is what -- oh, you mean the
15 Count 2 --

16 ATTORNEY EICHHORN: Count 2.

17 THE COURT: -- to set aside Count --

18 ATTORNEY EICHHORN: Yes.

19 THE COURT: I see. All right. I understand
20 that, then.

21 Let me hear from, it's Mr. Stone on the
22 Rooker Feldman issue.

23 ARGUMENT BY THE PLAINTIFFS

24 ATTORNEY STONE: Thank you, your Honor. May
25 it please the Court. My name is Edward Stone. I am

1 here on behalf of the Taylors, Terrence Taylor, Louise
2 Taylor and Phillip Taylor.

3 I will confine these remarks to the Rooker
4 Feldman issue, as you requested. In our view -- as you
5 might imagine, I differ from Mr. Eichhorn's view -- this
6 case is really about the defendants interfering with an
7 order of this Court.

8 This Court issued a dismissal order in 1989,
9 when Terrence Taylor settled his personal injury case.
10 Incorporated in that dismissal order is very, very
11 specific language with respect to what Terrence Taylor
12 and any other payee has the power to do.

13 That language states that he -- that Terence
14 Taylor nor any payee has the power for transfer, assign,
15 encumber, commute or do anything with respect to the
16 periodic payment. That order was violated in every
17 single application made.

18 With respect to --

19 THE COURT: Which count relates to a
20 violation of this Court's order?

21 ATTORNEY HOLMES: Count -- every one of
22 them. Count 1 --

23 THE COURT: Where in Count 1 do you say that
24 there is a violation of this Court's order?

25 ATTORNEY STONE: Okay. So, give me one

1 second, your Honor.

2 THE COURT: The argument you are now making
3 is that when this Court approved the periodic payments
4 originally, it said, in effect, no one can ever change
5 this.

6 ATTORNEY STONE: It said that nobody has the
7 power -- that's correct -- to transfer the periodic
8 payment. The settlement agreement --

9 THE COURT: Now I asked you, where does it
10 say that that's what you are suing on, or that you are
11 seeking a, I guess, an order to show cause why the --
12 actually, the person who violated the order is your
13 client.

14 ATTORNEY STONE: And my client lacked the
15 power to violate that order, your Honor.

16 THE COURT: All right. Well, where do you
17 say that?

18 ATTORNEY STONE: In paragraph 19 --

19 THE COURT: All right. Read me paragraph
20 19.

21 ATTORNEY STONE: It says, "The parties
22 entered into a confidential settlement agreement, which
23 was approved by the court and is expressly incorporated
24 by reference into the dismissal order."

25 And then in paragraph 21, it says that --

1 THE COURT: Well, that doesn't say it
2 violated this Court's order. That's what I asked you
3 for.

4 Where does it say in your complaint that you
5 are suing because your client violated -- never had the
6 power and violated this Court's order in agreeing to a
7 sale of his periodic payments?

8 ATTORNEY STONE: It says in paragraph 96 as
9 well, and it's alleged throughout the complaint --

10 THE COURT: Don't give me this "as well"
11 stuff. You haven't said it at all yet.

12 ATTORNEY STONE: Paragraph 96, "Transferee
13 defendants knew or should have known that the settlement
14 agreement entered into by Terrence, Louise and Phillip
15 Taylor expressly provided that they lacked the power to
16 assign the payments."

17 That's in paragraph 96. It was redacted in
18 the original version --

19 THE COURT: Now was that shown, was the
20 order shown to the judge in the state court?

21 ATTORNEY STONE: Terrence Taylor did not
22 participate in the state court action.

23 THE COURT: I didn't ask you that.

24 ATTORNEY STONE: To my knowledge, no, your
25 Honor.

1 THE COURT: How do you know?

2 ATTORNEY STONE: The petitions that I did
3 review --

4 THE COURT: Why isn't your answer, "I don't
5 know"?

6 ATTORNEY STONE: I don't know, your Honor.

7 THE COURT: All right. Not to your
8 knowledge it wasn't, because then you suppose you had
9 knowledge.

10 Have you looked at the record to see whether
11 that order was presented to the state court?

12 ATTORNEY STONE: Your Honor, a number of the
13 orders that were --

14 THE COURT: I'm sorry. Would you answer my
15 question? Have you looked at the record in the state
16 court to determine whether the state court judge saw or
17 was given that order?

18 ATTORNEY STONE: The records that I looked
19 at, the ones --

20 THE COURT: I'm sorry. Can you give me a
21 yes or a no, and then you may explain.

22 ATTORNEY STONE: Yes, your Honor.

23 THE COURT: You did look at the record.

24 ATTORNEY STONE: I looked at the records
25 that were not sealed by the Portsmouth State Court at

1 defendants' request, your Honor.

2 THE COURT: All right.

3 ATTORNEY STONE: The defendant requested
4 that those orders be sealed. I was unable to look at
5 the sealed orders. There were orders that I did look
6 at, and those orders did not attach the settlement
7 agreement, nor did they reference the dismissal order of
8 this Court, your Honor.

9 THE COURT: All right.

10 ATTORNEY STONE: I apologize for not
11 answering your question.

12 THE COURT: All right. Go on.

13 ATTORNEY STONE: Okay. So Rooker Feldman --
14 so what we are talking about in this case is about the
15 harm that occurred to Terrence Taylor by virtue of the
16 defendants' action. That harm predated the entry of the
17 first order.

18 Starting about two months before an order
19 was even entered, defendants were systematically making
20 cash advances to Mr. Taylor on an almost daily basis.
21 In fact, before the first --

22 THE COURT: Well, how did that change
23 anything?

24 ATTORNEY STONE: Because under the
25 Structured Settlement Protection Act and under the

1 Internal Revenue Code Section 5891, the only way to
2 transfer --

3 THE COURT: Well, the point -- you are
4 missing the point entirely. They gave him money because
5 they were trying to induce him to enter into this thing.

6 ATTORNEY STONE: Correct.

7 THE COURT: But he didn't sign anything. He
8 didn't give up anything. They were just giving him
9 money. He could have said, "I quit, and I am not going
10 to take or give up my payments," and he would have had
11 that money in his pocket.

12 ATTORNEY STONE: I have not reviewed the
13 advance agreements. I believe what I understand from --

14 THE COURT: You haven't reviewed the advance
15 agreements?

16 ATTORNEY STONE: My client does not have any
17 records, your Honor. Those documents are solely in the
18 possession of the defendants. The only records I have
19 been able to review are the ones I have been able to get
20 from the courts, bank records that I got from my client,
21 and other records that were maintained by my client that
22 were not abandoned when he was forcibly evicted from his
23 home --

24 THE COURT: Is there any claim that your
25 client is not mentally competent? Does he need a

1 guardian ad litem?

2 ATTORNEY STONE: I would submit, your Honor,
3 that --

4 THE COURT: I'm sorry. Does he need a
5 guardian ad litem?

6 ATTORNEY STONE: I don't believe he needs a
7 guardian ad litem, per se, but he certainly could use
8 help. He has gotten help. He is seeking counseling,
9 and he is working on rehabilitating himself, your Honor.
10 That's what we have been doing --

11 THE COURT: Rehabilitating himself from
12 what?

13 ATTORNEY STONE: Terrence Taylor engaged in
14 a number of transactions, your Honor. He shouldn't have
15 done it.

16 THE COURT: I understand that. What is he
17 rehabilitating --

18 ATTORNEY STONE: He is trying to find a way
19 to find useful employment, to get himself educated --

20 THE COURT: Is he a drug abuser?

21 ATTORNEY STONE: No, he is not, your Honor.

22 THE COURT: Well, what is he seeking
23 rehabilitation for?

24 ATTORNEY STONE: Not rehabilitation, your
25 Honor. He is trying to get his life back on track.

1 THE COURT: All right.

2 ATTORNEY STONE: He went through a period of
3 time, over two years, where he engaged in 11
4 transactions that decimated a settlement that was
5 designed to protect him for his lifetime.

6 THE COURT: All right. Now tell me again,
7 succinctly --

8 ATTORNEY STONE: Yes, your Honor.

9 THE COURT: -- why you think this isn't a
10 case in which under, at least for Count 1, that you are
11 not seeking that I overturn a state judge order.

12 ATTORNEY STONE: So, we submit, your Honor,
13 that he is not a state court loser. He didn't
14 participate in the actions in federal court -- in state
15 court, your Honor.

16 He was given documents to sign. He had
17 notaries sent to his home, and then that paperwork was
18 taken 500 miles away to a courthouse in Portsmouth. He
19 never appeared as a plaintiff. He never appeared as a
20 defendant, and he never appeared as a witness in those
21 actions.

22 THE COURT: Wouldn't he have to appear as a
23 petitioner?

24 ATTORNEY STONE: In this particular court
25 that was chosen by defendant, a personal appearance was

1 not required.

2 THE COURT: Right. But he had the
3 opportunity to be there, and he had to be a named party.

4 ATTORNEY STONE: He was not a named party,
5 your Honor. Under the Structured Settlement Protection
6 Act, it's In Re Structured Asset Funding, LLC, or In Re
7 1, 2, 3 Lump Sum.

8 The paperwork and the documentations were
9 prepared by defendants. They were delivered to Terrence
10 Taylor in his home in West Virginia by defendants. They
11 were taken by a notary, who went to his home in West
12 Virginia, to a courthouse in Portsmouth, Virginia, 500
13 miles away. They were handed to the judge in
14 Portsmouth, and the judge signed an order.

15 And that's how it happened, your Honor. He
16 did not ever appear in Portsmouth. In fact --

17 THE COURT: All right. Number one, you say
18 he is not -- I don't have a lot of time --

19 ATTORNEY STONE: I'm sorry.

20 THE COURT: -- so be succinct.

21 ATTORNEY STONE: Okay.

22 THE COURT: Number one, you say he said
23 didn't participate and so he is not a loser. What else?

24 ATTORNEY STONE: That the injuries were
25 caused by defendants' conduct. All of those advances

1 started this whole process, and they occurred well in
2 advance. And we should be entitled to discovery to see
3 what consequences they came with.

4 I believe that there may have been high
5 interest rates attached to those advances that were not
6 disclosed to Terrence. He was just told: Call
7 Defendant Rhett and you can get money.

8 We don't have to review or overturn those
9 judgments --

10 THE COURT: I thought you said the payments
11 were inducements, not loans.

12 ATTORNEY STONE: I don't know what they
13 were, your Honor. Typically, when an advance is made,
14 there is some paperwork that is filed.

15 What I know from interviews with my client
16 is he was handed some documents, it was several pages
17 long. He was told to sign it, "and you'll get your
18 money." He signed it, and then wire transfers were
19 made.

20 I was able to review his bank records only.
21 I have not reviewed the advance agreements, your Honor.
22 They are not in my client's position.

23 And the injuries that we allege, even in
24 Count 1, were not caused solely by the state court
25 order. The injuries, I submit, were caused when they

1 started making these predatory advances, systematic
2 advances, almost on a daily basis, and calling him and
3 saying, "Do you need more money? Do you need more
4 money?"

5 THE COURT: Why don't you go to Portsmouth
6 and address this with the Portsmouth Court?

7 ATTORNEY STONE: The first thing that we
8 did, your Honor, which we just --

9 THE COURT: I'm sorry.

10 ATTORNEY STONE: Yes.

11 THE COURT: I asked a question. I expect a
12 direct answer. Why didn't you go to Portsmouth and
13 address this issue with the Portsmouth Court that
14 entered the order?

15 ATTORNEY STONE: We first wanted to unseal
16 the order in this court. The original settlement
17 agreement was filed under seal in this court, and just
18 this week we had it unsealed.

19 THE COURT: All right. Why -- that doesn't
20 answer my question. Why don't you go to the Portsmouth
21 court and tell the Portsmouth court why its order should
22 be -- why the order was somehow fraudulently obtained?

23 ATTORNEY STONE: We he can do that, your
24 Honor, but Terrence Taylor doesn't drive. And to take
25 him 500 miles to the Portsmouth court, we felt that the

1 only --

2 THE COURT: How many miles is it from here?

3 ATTORNEY STONE: I think it's about, over
4 300 miles from here, about 400 miles.

5 THE COURT: Yes. And you drive.

6 ATTORNEY STONE: I do, your Honor. It would
7 be a long drive from Stamford, Connecticut, but I do
8 drive, sometimes too fast, I confess.

9 But the injuries were not caused solely by
10 that order, your Honor. And we've alleged in that count
11 and in other counts what caused the injuries. And we
12 believe that this court is the appropriate forum to
13 enforce its own order, that was disregarded by the
14 defendants.

15 The defendants have an obligation under
16 Section 5891 of the Internal Revenue Code to file
17 petitions where the seller is domiciled. At the time,
18 he was domiciled in West Virginia. That's where he
19 resided and that's where he intended to remain.

20 THE COURT: What else do you have on Rooker
21 Feldman?

22 ATTORNEY STONE: We don't have to overturn
23 the court orders to afford a remedy to my client.

24 THE COURT: Really?

25 ATTORNEY STONE: Any number of ways that it

1 can be done. The defendants or any one of them could be
2 ordered to pay damages for their bad conduct. They
3 could be held accountable for their conduct.

4 THE COURT: And that isn't an overturning of
5 that order? Because the order authorized it.

6 ATTORNEY STONE: It doesn't have to be
7 overturned to say that the defendants violated the
8 statute.

9 THE COURT: All right. That argument
10 doesn't move me.

11 ATTORNEY STONE: The defendants --

12 THE COURT: It clearly -- it clearly
13 requires a rejection of that order. The order
14 authorized it. And if you say -- what you are saying is
15 the order should not have been entered.

16 ATTORNEY STONE: Your Honor, what I am
17 saying the order is void. All of the orders --

18 THE COURT: All right. If it's void, then
19 you don't get out of Rooker Feldman on that ground.

20 ATTORNEY STONE: But the harm that it --

21 THE COURT: Because then you are asking this
22 Court to sit in judgment of that order.

23 What else do you have under Rooker Feldman?

24 ATTORNEY STONE: I think the Court can
25 enforce its own order, and I believe that if -- all of

1 the state court orders were obtained after the dismissal
2 order, as well, that was issued in this Court.

3 That's all I have on Rooker Feldman, your
4 Honor.

5 THE COURT: All right.

6 ARGUMENT BY DEFENDANTS SAF, iSETTLEMENTS

7 THE COURT: Let me ask Mr. Eichhorn.

8 Mr. Eichhorn, why aren't these orders
9 entered by the Virginia Court in violation of this
10 Court's settlement order, in which this Court,
11 accordingly -- according to Mr. Stone said that these
12 periodic payments could not in any way be changed?

13 ATTORNEY EICHHORN: Judge, the settlement
14 agreement was sealed by the Court as part of the
15 dismissal order. It was not attached. It was sealed,
16 recently unsealed. I have haven't seen the dismissal --
17 the settlement agreement.

18 And Mr. Taylor provided to the Portsmouth
19 court affidavits indicating that he could not find the
20 settlement agreement. In every one of these cases the
21 clients made sure to obtain the settlement agreement.
22 And if they cannot obtain the settlement agreement they
23 obtained an affidavit from the seller indicating that
24 they cannot locate the settlement agreement.

25 THE COURT: So the Portsmouth court did not

1 receive the order of this Court.

2 ATTORNEY EICHHORN: That's my understanding,
3 your Honor, that the Portsmouth court --

4 THE COURT: Instead, it received only an
5 affidavit from Mr. Taylor saying, "I can't find it."

6 ATTORNEY EICHHORN: Correct. In addition to
7 his waiver of --

8 THE COURT: All right. It has been unsealed
9 now.

10 ATTORNEY EICHHORN: Correct.

11 THE COURT: And you have seen it.

12 ATTORNEY EICHHORN: I haven't not seen it
13 yet, your Honor. It was recently, about a week ago,
14 unsealed. I haven't seen it.

15 THE COURT: Why haven't you seen it if it's
16 been unsealed?

17 ATTORNEY HOLMES: Your Honor, may I address
18 the Court on that point?

19 I received a phone call yesterday from
20 Mrs. Walker in the Clerk's Office. They are looking for
21 it in the vault and have not located it.

22 THE COURT: Oh, I see. It has been unsealed
23 but hasn't been located.

24 ATTORNEY HOLMES: Correct, your Honor.

25 THE COURT: How about the defendants. Don't

1 they have the copy of it?

2 No, the defendants wouldn't. Who was the
3 original defendant.

4 ATTORNEY EICHHORN: Delonghi -- a coffee --
5 manufacturer a coffee makers.

6 THE COURT: All right. They will have a
7 copy.

8 ATTORNEY HOLMES: Your Honor, again if I
9 may?

10 THE COURT: Yes. You have asked and they
11 don't find it.

12 ATTORNEY HOLMES: Correct, your Honor.

13 THE COURT: So how do I know that that order
14 has been violated? I don't, do I?

15 ATTORNEY EICHHORN: No, you don't, your
16 Honor. Neither do I.

17 THE COURT: All right.

18 Respond to Mr. Stone's arguments that your,
19 that his client is not a state court loser. He didn't
20 participate, he wasn't there, and he is not a named
21 party.

22 ATTORNEY EICHHORN: Your Honor, the way the
23 Structured Settlement Protection Act works is that the
24 seller is an interested party. So there is a petition
25 filed by the structured settlement entity seeking to

1 have the payments assigned, and Mr. Taylor is named as
2 an interested party.

3 So he is given notice of the proceedings.
4 He is given a right to object under the Structured
5 Settlement Protection Act. He files affidavits in court
6 from him. He is given copies of all the materials, and
7 did have a right to object under the Structured
8 Settlement Protection Act.

9 THE COURT: So he really isn't a loser --
10 this is sort of a novel Rooker Feldman case. He is not
11 a loser; he is just a participant --

12 ATTORNEY EICHHORN: He is a participant,
13 your Honor --

14 THE COURT: -- who is now complaining about
15 that judgment.

16 ATTORNEY EICHHORN: Correct. From my
17 perspective, your Honor, it's very similar to an agreed
18 order being entered. He consented to the relief that
19 was agreed to and approved by the Court.

20 Rooker Feldman has been applied in the
21 context of agreed orders. Courts have found that those
22 agreeing to orders --

23 THE COURT: In this circuit?

24 ATTORNEY EICHHORN: I am not sure if in this
25 circuit. We cited in our papers, I think there were

1 some District Court decisions. I would have to check to
2 see if it was in this circuit, your Honor.

3 THE COURT: All right. Go on. What other
4 responses do you have to Rooker Feldman?

5 ATTORNEY EICHHORN: At the end of the day,
6 your Honor, Mr. Stone's argument didn't change the fact
7 that they are seeking to overturn the state court orders
8 and the state court pronouncements.

9 When you look carefully at the amended
10 complaint and look to see the relief they are
11 requesting, particularly in paragraph 99, 244 and the
12 prayer for relief, where they seek voiding the
13 transactions, at the end of the day the only way that
14 can happen is for this Court to reverse the state court
15 judgments, and therefore Rooker Feldman should apply.

16 THE COURT: Now what is your understanding
17 of what Count 2 alleges?

18 ATTORNEY EICHHORN: My understanding, your
19 Honor, is that Count 2 alleges a so-called violation of
20 the West Virginia Structured Settlement Protection Act.
21 It incorporates into that count paragraph 99, that asks
22 for this Court to void the Portsmouth and Fairfax
23 Circuit Court orders that were entered. And my
24 understanding is that the relief that the plaintiffs are
25 seeking in Count 2 is the same as Count 1, that they

1 want this Court to void the state court orders.

2 THE COURT: All right. Thank you. Let me
3 ask Mr. Stone one more question on this.

4 ARGUMENT BY THE PLAINTIFFS

5 THE COURT: Mr. Stone, I don't see what role
6 the West Virginia Structured Settlement Protection Act
7 has to do or has to play in this case. Can you clarify
8 that for me?

9 ATTORNEY STONE: Yes, your Honor. When
10 Congress passed Section 5891 of the Internal Revenue
11 Code, it set the backdrop for Structured Settlement
12 Protection Acts across the country.

13 And in that section, there is a requirement
14 that, number one, the seller proceed with an application
15 in his state of domicile. And I am alleging that in
16 that count, that defendants deliberately avoided going
17 to his state of domicile, coached him on why he should
18 go to the particular court in Portsmouth, Virginia,
19 because they knew that the West Virginia court would not
20 granted the relief requested.

21 THE COURT: Why not?

22 ATTORNEY STONE: Because they knew from
23 their experience in the structured settlement market,
24 your Honor, that they require --

25 THE COURT: Who is they?

1 ATTORNEY STONE: The Defendants SAF,
2 Blazingstar and Rhett Wadsworth, who are here today --

3 THE COURT: They knew what?

4 ATTORNEY STONE: They knew that the West
5 Virginia Court was not going to approve a request to
6 sell those payments.

7 THE COURT: How did they know that?

8 ATTORNEY STONE: They knew that from their
9 experience. And we have submitted in the complaint,
10 based on Terrence Taylor's knowledge, he was told early
11 on: We can't get this done in West Virginia. You have
12 to go to Virginia. Here is the paperwork and that's
13 where you go.

14 And that triggers liability also under 5891
15 of the Internal Revenue Code, which is very important,
16 which also states that you have to --

17 THE COURT: Well, there is no relief under
18 the West Virginia Settlement Protection Act. There
19 is -- are you claiming, then, relief in Count 2 under
20 some other act, IRS?

21 ATTORNEY STONE: No, not under the IRS, your
22 Honor. But the West Virginia Structured Settlement
23 Protection Act is actually incorporated into the West
24 Virginia Consumer Protection Act. It is part and parcel
25 of the same act. And a violation of the West Virginia

1 Structured Settlement Protection Act would trigger a
2 violation under the West Virginia Consumer Protection
3 Act, your Honor, and that is exactly what we are
4 alleging.

5 THE COURT: All right.

6 Do you have a response to that now,
7 Mr. Eichhorn?

8 ARGUMENT BY DEFENDANTS SAF, iSETTLEMENTS

9 ATTORNEY EICHHORN: Again, your Honor,
10 Count 2, the relief that he is seeking -- and his
11 argument hasn't changed -- to set aside the underlying
12 state court orders. Rooker Feldman would apply there.

13 Your Honor raised the question, you know,
14 with him -- with Mr. Stone, rather, what relief is he
15 seeking?

16 And he was, you know, unable to articulate
17 the relief that he is seeking, which is at the end of
18 the day reversing the state court orders that were
19 entered.

20 THE COURT: All right.

21 Do any of the other defendants' counsel wish
22 to address the Rooker Feldman issue?

23 ATTORNEY SPIVEY: Your Honor, I would like
24 to make one quick point.

25 THE COURT: All right. Come to the podium,

1 and for the court reporter identify yourself and your
2 client, please.

3 ARGUMENT BY DEFENDANT BLAZINGSTAR

4 ATTORNEY SPIVEY: Yes, sir, your Honor. Ed
5 Spivey for Blazingstar.

6 And I understand the Court doesn't have much
7 time. I'm going to make this very brief --

8 THE COURT: Well, what I am going to do is I
9 am going to finish the Rooker Feldman argument. Then I
10 am going to hear a pretrial. I am going to have lunch,
11 and then we are going to come back and I am going to
12 finish the argument in this case.

13 ATTORNEY SPIVEY: Your Honor, with regard to
14 the Court's question, the question you started with and
15 have reiterated a few times, I would like to point the
16 Court to the Fourth Circuit's decision in Divani in
17 2006. And in that decision, the Fourth Circuit said,
18 "It is important to note that the Rooker Feldman
19 Doctrine applies even if the state court loser did not
20 argue to the state court the basis of recovery that he
21 asserts in the federal district court. A claim seeking
22 redress for an injury caused by the state court decision
23 itself, even if the basis of the claim was not asserted
24 to the state court, asks the federal district court to
25 conduct an appellate review of the state court

1 decision."

2 I believe, your Honor, under that holding
3 the theories regarding the West Virginia act, the other
4 theories, they are all seeking to overturn the -- or
5 they are getting at the injury that is allegedly caused
6 by the Portsmouth Circuit Court order.

7 And so, your Honor, I think that the focus
8 per the Fourth Circuit is on the injury. The injury
9 here is allegedly caused because of the Portsmouth
10 Circuit Court orders and, therefore, the theories of
11 recovery that spring from it all source back to that
12 injury and covered by Rooker Feldman.

13 THE COURT: Any more other defendant wish to
14 say anything on Rooker Feldman?

15 ATTORNEY FRANCO: No, your Honor.

16 THE COURT: All right.

17 ATTORNEY STONE: Your Honor?

18 THE COURT: Yes.

19 ARGUMENT BY THE PLAINTIFFS

20 ATTORNEY STONE: If I may, and I will be
21 brief. I would just argue --

22 THE COURT: Yes, you will be.

23 ATTORNEY STONE: -- in those cases, those
24 were circumstances where people appeared as parties.
25 That's all I will say, your Honor.

1 THE COURT: All right. I'll give you the
2 last chance. They weren't parties there, he is
3 saying -- or here. They were in those cases; they
4 weren't here, or this, Taylor was not here.

5 ARGUMENT BY DEFENDANT BLAZINGSTAR

6 ATTORNEY SPIVEY: Not only did Mr. Taylor
7 submit documents which were used in furtherance of
8 seeking that Portsmouth Circuit Court order, he was
9 given notice of the proceeding; he had absolute right to
10 participate.

11 THE COURT: All right. By statute.

12 ATTORNEY SPIVEY: Yes, your Honor.

13 THE COURT: And so you are saying the fact
14 that he didn't elect to exercise that right doesn't
15 change the Rooker Feldman analysis.

16 ATTORNEY SPIVEY: Right.

17 THE COURT: All right. Now, I am going to
18 take a recess in this matter. We will reconvene in this
19 matter at 1:00 o'clock, and we will -- actually, make it
20 ten minutes after 1:00. That should give you enough
21 time to have some lunch downstairs. And then we will
22 reconvene, I will hear further argument on this.

23 Thank you.

24 (Court recessed at 12:40 p.m.)

25

1 (Court called to order.)

2 COURT QUESTIONS / PRELIMINARY RULING

3 THE COURT: What I am going to do is to ask
4 a couple of specific questions, I'll get specific
5 answers, and I am going to tell you what my thinking is
6 on this, and I am going to give you an opportunity, a
7 short one, brief one, to file something in response,
8 telling me why you think what I am thinking is wrong.
9 And you may succeed.

10 But I have now determined that the
11 settlement agreement, by the way, or the original one,
12 the Clerk's Office still hasn't found it.

13 I have also looked again at the -- one of
14 the Portsmouth orders.

15 I am curious, who is the circuit court
16 judge? Somebody, you said it was Sword, but this
17 signature doesn't look like Sword. Who was the circuit
18 court judge? Does anybody know?

19 ATTORNEY SPIVEY: Your Honor, the one that I
20 saw is signed by Judge Hawk, and the other is by Judge
21 Sword.

22 THE COURT: Judge who?

23 ATTORNEY SPIVEY: Hawk.

24 THE COURT: And the other?

25 ATTORNEY SPIVEY: Sword.

1 THE COURT: Look at this one. Tell me --
2 now, you stay there. The court security officer will
3 bring it to you.

4 And show it to all counsel, if you want.

5 I am just curious. It's not important to
6 what I am going to say.

7 ATTORNEY SPIVEY: Your Honor, it's my
8 understanding that is Judge Sword.

9 THE COURT: S-w-o-r-d?

10 ATTORNEY SPIVEY: Yes, sir.

11 THE COURT: And you all agree, that's who it
12 is?

13 ATTORNEY HOLMES: Yes, your Honor.

14 THE COURT: Next time you see her or him --
15 I don't know which it is -- you can say that at least
16 one person has found the signature inscrutable,
17 unrecognizable as Sword.

18 All right. Let me ask these questions
19 quickly.

20 I think maybe I'll save the time. I have
21 thought about this, given it some consideration.

22 And let me run through the facts, first of
23 all. This is a case in which the plaintiff, Terrence
24 Taylor, and the other plaintiffs are challenged the
25 transfer of his interest in deferred payment annuity, a

1 structured settlement, to defendants in exchange for
2 lump sum payments.

3 The defendants seek to dismiss it on a
4 number of bases, first Rooker Feldman, and failure to
5 state a claim for some of the claims, that I'll get
6 into.

7 And also, Wadsworth moves to dismiss also
8 on -- is it Wadsworth? Yes, who moves to dismiss on
9 personal jurisdiction grounds in addition to the others.

10 Rooker Feldman would be, Mr. Stone -- or no,
11 I'm sorry. Mr. Eichhorn, a Rooker Feldman claim would
12 be a 12(b)(1) claim, wouldn't it, a claim under a lack
13 of jurisdiction?

14 ATTORNEY EICHHORN: Correct, your Honor.

15 THE COURT: All right. Now there is also
16 12(b)(6) and also a 12(b)(2) with respect to the
17 personal jurisdiction.

18 Now I understand that the cases arises out
19 of the transfer of Plaintiff Taylor's interest in
20 structured settlement annuity payments over his
21 lifetime. In 1988, Taylor, who was then I guess a
22 child, suffered serious injuries when a defective heater
23 caused a fire in the home in which he lived.

24 He suffered third degree burns over
25 60 percent of his body, and will lost fingers on his

1 right hand, toes on his left foot, and the entirety of
2 his right leg. And as a result of that incident he
3 suffered from PTSD and other permanent afflictions, and
4 persistent depressive disorder.

5 A suit was filed in this district seeking
6 damages, and the parties ultimately entered into a
7 confidential settlement agreement, which was approved by
8 the Court. And that's the order no one can find.

9 It's, of course, necessary that we find it.
10 For one thing, I would like to know whether I signed it.
11 I was here in 1989. I was sitting in 1989.

12 As my clerks will tell you, I rarely sign
13 orders of this sort without a full hearing and that sort
14 of thing. But we'll see.

15 There were -- at that time there was Judge
16 Bryan, Albert Bryan, junior, Judge Cacheris, Judge
17 Hilton and I were the only judges here.

18 The settlement took the form of a single
19 premium annuity contract that would periodic tax-free
20 payments to plaintiff, Terrence Taylor, through his
21 guardian, Louise Taylor. That's the structured
22 settlement. In effect, it's a series of payments over a
23 period of time.

24 And the settlement agreement stated that,
25 "Periodic payments cannot be accelerated, deferred,

1 increased or decreased by the plaintiff or any payee,
2 shall the plaintiff or any payee have the power to sell,
3 mortgage, encumber or anticipate the periodic payments
4 or any" -- apparently -- "part thereof by assignment or
5 otherwise."

6 Now, I don't know who got that provision.
7 If it's under -- if it was under seal and they can't
8 find it, where in the world did that come from?

9 Yes.

10 ATTORNEY STONE: I believe that we will be
11 able to, either from the original defendant in the case,
12 through a search their archives, or a search of this
13 Court's archives --

14 THE COURT: All right. Let me stop you
15 right there. You purport to put a quote in there. You
16 don't have the document from which you quote.

17 ATTORNEY STONE: I received an unsigned copy
18 from the original attorney in the case, who represented
19 to me and will give testimony to this Court, if you
20 allow me, your Honor, that that was the language --

21 THE COURT: All right. Well, why don't you
22 put a footnote to that, explaining that?

23 ATTORNEY STONE: I will, your Honor.

24 THE COURT: Because otherwise, it looks
25 strange.

1 ATTORNEY STONE: I understand, your Honor.
2 I was hopeful that when the sealing order was granted,
3 we would get the document itself.

4 THE COURT: You mean when lifting of the
5 seal.

6 ATTORNEY STONE: When the seal order was
7 lifted, yes.

8 THE COURT: All right.

9 Now, plaintiffs also allege that Louise and
10 Phillip Taylor agreed to the terms of the settlement
11 agreement, agreed to take less money for themselves, on
12 the understanding that the structured settlement
13 payments would cover the costs of his medical expenses
14 and living expenses for the rest of his life.

15 Well, I don't think there is any contest
16 here, nor could there be, that the original settlement
17 agreement is infirm in any way.

18 In 2009, Louise resigned, Louise Taylor, as
19 guardian, during her recovery from a serious automobile
20 accident, and payments under the structured settlement
21 were delivered directly to Terrence, presumably because
22 he was then an adult.

23 Now, then in 2012 he moved from Herndon,
24 Virginia, to Martinsburg, West Virginia, where he
25 resided apparently, according to the complaint, from

1 June 2012 to June 2014, and presumably still lives
2 there. Is that correct?

3 ATTORNEY STONE: No, your Honor. He has
4 moved back to Virginia and lives with his parent.

5 THE COURT: In Herndon.

6 ATTORNEY STONE: In Manassas, Virginia.

7 THE COURT: All right.

8 Now, thereafter it appears that he
9 eventually entered into at least 11 transfer agreements
10 with various companies who contacted him about selling
11 his periodic payments for a lump sum; in other words,
12 going the other way.

13 And he eventually entered into 11 transfer
14 agreements in just over 24 months, exchanging his future
15 payments for upfront lump sum payments from the
16 companies. These transfers were pursuant to court
17 orders of the Portsmouth Circuit Court. And I've got
18 one of them right here. I have looked at them.

19 Now, when they got to the last one, the one
20 in July, I think, he apparently sought to stop the last
21 transfer by writing a letter to the Portsmouth Circuit
22 Court in July 2013. The letter was received by Judge
23 Sword in August, after the transfer had been approved.
24 That's all the information we have on that.

25 So, plaintiffs allege essentially that the

1 defendants procured the, Taylor's agreement to these
2 transaction through what the plaintiffs alleged are
3 strong-arm tactics and predatory behavior.

4 Plaintiffs allege that defendants' so-called
5 modus operandi was to befriend individuals with large
6 structured settlements, gain their confidence and trust
7 of so-called naive injury victims, and then
8 systematically divest them of their payments.

9 Plaintiffs contend that large cash advances
10 that the plaintiff, Taylor, got from these entities, in
11 essence, as the complaint puts it, hooked them -- hooked
12 him on spending large sums of cash. And the plaintiffs
13 liken that to giving crack cocaine to an addict.

14 That doesn't move me at all. It's not
15 actionable.

16 But in any event, plaintiffs also allege
17 that defendants knew or should have known that he would
18 need his structured settlement payments for support of
19 himself in his dependent daughter; and that he is now as
20 a result insolvent, unable to support himself and his
21 child, evicted from his home in West Virginia, now
22 living, as I have just been informed, with his parents
23 here in Manassas, Virginia. And so they raise a number
24 of claims.

25 Now I am going to review briefly with you

1 what I am thinking with respect to each of these claims.
2 So in the end I am going to defer ruling, but I am
3 giving you the luxury of being able to address precisely
4 what I am thinking.

5 Count 1, the Rooker Feldman Doctrine, I
6 think clearly provides, as the Feldman case points out,
7 that the United States District Court has no authority
8 to review final judgments of a state court in a judicial
9 proceeding.

10 So litigants can't circumvent state court
11 orders by instituting federal action which, although not
12 styled as an appeal, amounts to nothing more than an
13 attempt to seek review of the state court's decision by
14 a lower federal court. That's from an unpublished
15 Fourth Circuit decision, Smalley against Shapiro and
16 Burson.

17 And the Fourth Circuit has also said, in the
18 Barefoot case, that the prohibition extends not only to
19 law issues actually decided by a state court, but also
20 those that are inextricably intertwined with the
21 questions ruled upon by a state court; that is, success
22 of the federal claim depends on a determination made by
23 the state court wrongly decided -- that the state court
24 wrongly decided the issues before it.

25 So, the Supreme Court also made clear, more

1 recently, in 2005 that the doctrine applies to state
2 court losers complaining of injuries caused by state
3 court judgments rendered before Federal District Court
4 proceedings, commenced and inviting District Court
5 review and rejection of those judgments.

6 Now, Count 1 seems to me to fall squarely
7 within that. I think the plaintiff can be considered,
8 in effect, a losing party, or at least a party in a
9 state court proceeding. He clearly had the right to
10 appear. He did the make an appearance through
11 affidavits and otherwise. But he was furnished with
12 notice of the right to appear. And although the Exxon
13 Mobil case in the Supreme Court says a state court
14 loser, the argument that he wasn't a state court loser
15 is really not persuasive to me, because Rooker Feldman
16 at its core is a doctrine about the appellate
17 jurisdiction of federal courts.

18 The state supreme -- or the Supreme Court
19 emphasized in Exxon Mobil case that Rooker Feldman is a
20 matter of whether, and which, federal courts has
21 appellate jurisdiction over the judgments of state
22 courts.

23 Section 1257 is what the Rooker Feldman
24 Doctrine derives from, and that confers appellate
25 jurisdiction solely on the United States Supreme Court

1 after the highest court of a state has rendered a
2 decision on the matter.

3 So Rooker Feldman is really a case about the
4 Doctrine of Federalism. It's motivated by respect for
5 the competence in decisions of state courts.

6 So it seems to me sufficient that a federal
7 court plaintiff, as here, seeking to undo a state court
8 order on the ground that the order was contrary to law,
9 whether or not that plaintiff actually lost or prevailed
10 in that order, isn't crucial.

11 It's unusual for this sort of situation to
12 arise. I don't remember any party citing a structured
13 settlement attack, that is, an attack on a state court
14 order approving the sale of future payments for a lump
15 sum. I don't recall any case applying Rooker Feldman to
16 that.

17 Am I correct, Mr. --

18 ATTORNEY EICHHORN: Your Honor, if I may, we
19 cited to a --

20 THE COURT: -- Eichhorn?

21 ATTORNEY EICHHORN: -- a District Court
22 decision from the United States District Court for the
23 Southern District of New York.

24 THE COURT: Yes, Capela.

25 ATTORNEY EICHHORN: Capela.

1 THE COURT: Yes. Other than that, no --

2 ATTORNEY EICHHORN: Other than that.

3 THE COURT: -- Circuit or Supreme Court
4 decision.

5 ATTORNEY EICHHORN: Other than that, no.

6 THE COURT: All right.

7 Well, in any event, I think that issue is
8 not troublesome to me.

9 I think that -- I now have a note saying
10 that the settlement order has not been located from the
11 1989 case. Very strange. I don't know why that's the
12 case, but I will explore that myself.

13 So, as to Count 1, I think that falls
14 squarely within the analytical framework of Rooker
15 Feldman. The state court judgment in issue was clearly
16 rendered before these federal court proceedings were
17 initiated, and I think Taylor can be considered a losing
18 party, or at least a party. As I said, I don't even
19 think it matters whether he is a losing party or even a
20 winning party. It's really an issue about doctrine
21 about appellate jurisdiction of federal courts.

22 Although Taylor didn't technically lose in
23 Portsmouth, his present allegation is that the order
24 approved transfer in the Portsmouth court violates the
25 law and harms him. And that, I think, is sufficient to

1 establish this prong of Rooker Feldman. And I think
2 that is in accord with at least two other District
3 Courts. We mentioned Capela, which is the Eastern
4 District of New York. It's also Meyers against General
5 Motors, which is the Northern District of Illinois; and
6 Sanders, which is a case in the Northern -- also
7 Northern District of Illinois, 2015.

8 The plaintiffs in, at least in Count 1
9 complained that the injuries wrought by the state court
10 judgment -- that's what he is complaining of -- the
11 transfer of Terrence's or Taylor's interest in his
12 structured settlement payments could not have occurred
13 without the Portsmouth judgment order.

14 So I think plaintiff has essentially invited
15 this Court to review and reject a state court judgment.

16 Plaintiffs claim that the agreements don't
17 comport with the -- don't comport with the Act and seek
18 to undermine the Circuit Court's -- the Portsmouth
19 Circuit Court's considered judgment that the agreements
20 did comply with the Virginia Structure Settlement
21 Protection Act.

22 Plaintiffs' prayer for relief makes it all
23 the more obvious that that's what we are doing, that's
24 what is being asked of this Court in Count 1, namely
25 rescission of all transactions pursuant to the court

1 order agreement, restoration of Terrence's payments that
2 were transferred as a consequence of the court approved
3 agreement, and declarations of all transactions,
4 pursuant to the court ordered agreement, that they are
5 all void.

6 If we look back at Rooker itself, the
7 Supreme Court there dismissed a case in which the
8 plaintiff asked a Federal District Court for relief from
9 a state court judgment that plaintiff alleged was
10 rendered in contravention of the Constitution.

11 I think that's roughly analogous to what is
12 going on here. Plaintiff seeks to do that here. He is
13 being obligated under a state court sanction
14 transaction, and he seeks an order rescinding and
15 undoing that transaction on the ground that the state
16 court's order is in contravention of Virginia and West
17 Virginia law pertaining to structured settlements.

18 So I think Rooker Feldman does dispose of
19 Count 1.

20 Now, the defendants claim that Rooker
21 Feldman disposes of all the counts. I don't agree with
22 that. The argument is that they are inextricably
23 intertwined with the court orders.

24 The defendants argued that because to
25 prevail on plaintiffs' other claims, plaintiff must show

1 that the defendants engaged in fraudulent or other bad
2 practices, which the Portsmouth Circuit Court expressly
3 found, by the transfer agreement, okay and in Taylor's
4 best interest.

5 But I think that the Exxon Mobil case
6 prohibits such a broad application of the Rooker Feldman
7 Doctrine. The Supreme Court in that case made clear
8 that it's a doctrine of appellate versus original
9 jurisdiction, not of claim or issue preclusion.

10 So, I don't think it disposes of all the
11 claims. I think it dispose of Claim 1.

12 To the extent that the plaintiffs allege
13 that defendants perpetrated a fraud on the Portsmouth
14 Circuit Court through alleged misrepresentations, I
15 think that's what is unmistakably clear in Fourth
16 Circuit precedent: That issue should be addressed to
17 the Portsmouth Court, not here.

18 The proper forum, as the Fourth Circuit said
19 in Wiseman against Charles E. Smith, at 829 Federal 2nd,
20 the proper forum in which to assert that a party has
21 perpetrated a fraud on the court is the court which
22 allegedly was a victim of that fraud. That's where that
23 claim should go, if that's the gravamen of or any
24 significant part of Count 1.

25 Now Count 2 asserts a violation of

1 West Virginia's Structured Settlement Procedures Act.
2 And as my questions from the bench reflected, I just
3 don't see how the West Virginia Settlement Procedures
4 Act plays any role in what the plaintiffs are seeking
5 here.

6 The West Virginia act itself allows the suit
7 to have been brought or the application to have been
8 made in Virginia. It doesn't require, just because he
9 was domiciled there, to be made there. It allows it to
10 be brought in Virginia.

11 The notion that the Internal Revenue Code,
12 some provision there requires some reports to be filed,
13 has absolutely, in my view, nothing to do with whether
14 Count 2 has any merit. I don't know that there is any
15 private cause of action for violating that provision, or
16 whether there is any sanction or punishment for failing
17 to do that, or whether the Portsmouth Court would regard
18 that as something that they should have known about and
19 weren't told about by the lawyers involved.

20 But that's up to the Portsmouth Court. I
21 don't think the West Virginia Structured Settlement
22 Procedure Act in Count 2 states a claim on which relief
23 can be founded -- can be based. I don't there -- it's
24 true that the plaintiffs allege that the defendants
25 knowingly solicited Terrence in West Virginia with the

1 specific intent of inducing him to sign agreements that
2 were contrived, misleading, deceptive and in violation
3 of the West Virginia act.

4 Well, that isn't where it was done. There
5 isn't an allegation here that that there was fraud in
6 that regard. They certainly don't allege fraud. I am
7 going to come to that in a moment.

8 So I don't think the West Virginia act, it
9 certainly doesn't provide a private right of action, and
10 there aren't any factual violations that would support a
11 violation of the statute, which allows a West Virginia
12 resident in this context to go to Virginia and to get it
13 done in Virginia.

14 Now the plaintiff says, well, they knew they
15 couldn't get it in West Virginia, apparently from their
16 experience or what have you. I don't know why and I
17 don't know that I have been persuaded why they would
18 know that. But anyway, they wanted to get him 500 miles
19 from his home so that he wouldn't have much to complain
20 about. That's not a violation of the West Virginia act,
21 which allows it to be done in that fashion.

22 Now, if the Virginia Court was misled or
23 defrauded in any way, then that should be raised with
24 the Virginia State Court.

25 There is another point I think that's

1 troublesome. Taylor submitted an affidavit stating that
2 his current address was in Herndon, Virginia, at the
3 time. So I guess the argument is: Well, that's just a
4 document that the defendants gave to him and he signed
5 and they submitted it.

6 Well, that was fraudulent. They both
7 committed fraud, the plaintiff and -- neither one has
8 clean hands.

9 There is a West Virginia law on whether a
10 statute provides a private cause of action, which
11 appears in the West Virginia case at 591 Southeast 2nd,
12 and I don't think it fits that. So, Count 2 would go
13 for failure to state a claim.

14 Now, Count 3, as I understand it, is a count
15 alleging a breach of good faith and fair dealing. The
16 problem I have with this count is simple. The
17 allegations addressing how the defendants breached a
18 duty of good faith and fair dealing in the performance
19 of a contract with Taylor are all allegations that
20 occurred before there was a contract.

21 None of the allegations address how the
22 defendants, or any of them, breached a duty of good
23 faith and fair dealing, which apply only in the
24 performance of a contract with Taylor.

25 So, in essence, in Virginia if a contract

1 gives a party discretion on how to proceed in certain
2 ways under the contract, it's clear under Virginia Law
3 that that discretion must be exercised in good faith,
4 fair dealing.

5 The acts that are alleged here purporting to
6 be a lack of good faith and fair dealing all occurred
7 before there was a contract.

8 The plaintiffs do not here identify any
9 contractual provision that the defendants -- or in this
10 case it would be Structured Asset Funding, they don't
11 identify any provision that Structured Asset Funding
12 breached or that granted Structured Asset Funding
13 discretion, which it then abused.

14 So under Virginia Law the duty of good faith
15 and fair dealing restrains the exercise of contractual
16 discretion and bad faith, that is not a situation
17 alleged here. There is no allegation that there is a
18 breach of contract. There is no allegation here that
19 Structured Asset Funding breached a contractual duty.

20 And I don't find facts alleged here that
21 adequately allege a valid claim under Virginia's law of
22 a breach of good faith and fair dealing, because the
23 acts that are alleged occurred before there was a
24 contract; and there is no specified provision identified
25 that gave discretion to Structured Asset Funding, and no

1 allegations that they exercised that discretion -- which
2 I don't think existed -- in bad faith.

3 So then we go to the fraud. And here,
4 simply put, the pleading requirements for fraud are
5 fairly stringent. There has to be a false
6 representation of a material fact made intentionally and
7 knowingly with intent to mislead. There must be
8 reliance by misled party and resulting damage. Cases
9 holding that are legion.

10 And 9(b) also requires that that fraud be
11 alleged with particularity, the time, place and contents
12 of the false representations.

13 Now, plaintiff argues that the following --
14 or some allegations constitute the fraudulent
15 misrepresentations. They say that eight specific
16 incidences between April 26, 2012, and June 20, 2012, of
17 Structured Asset Funding sending documents and a notary
18 public to Terrence's home in Virginia, so Terrence could
19 sign some type of advance agreement before the very
20 first transfer petition was approve by the Portsmouth
21 Circuit Court, that that's one.

22 I don't see any representation or
23 misrepresentation or any of the other requirements.

24 Then there is another one that says regular
25 telephone conversations between the -- between

1 Defendant Wadsworth and Taylor related specifically to
2 advances, and plaintiff contends that, although Taylor
3 does not have copies of these advance agreements which
4 led him to, which led to him receiving more than a
5 hundred thousand of advance cash prior to the Circuit
6 Court's approval of the transfer agreement, that
7 allegation, I don't think, says anything about fraud in
8 accordance were Rule 8 or Virginia Law.

9 And they also note that the advances he
10 received were all highly suspect, predatory and contrary
11 to state and federal law. That doesn't add anything.

12 Then we go to paragraphs 158, 159, 164(i),
13 (ii) and 164(vi). I have looked at and read those.
14 They don't allege misrepresentations or representations
15 that were false, material, relied on, caused damage and
16 so forth.

17 So, at the moment, the fraud claim I am
18 inclined to dismiss, but with leave to amend.

19 Now, failure to state a claim for violation
20 of Virginia Consumer Protection Act. That act makes it
21 unlawful -- makes unlawful certain fraudulent acts or
22 practices committed by a supplier in connection with a
23 consumer transaction, including using other deception,
24 fraud, false pretenses, false promises or
25 misrepresentations in connection with a consumer

1 transaction.

2 And here, what's alleged is that they used,
3 that the defendants used deception when Wadsworth stated
4 that he would never take advantage of his friendship,
5 that's a misrepresentation, they say.

6 I think there are a number of problems.
7 First of all there is a statute of limitations issue.
8 It's a two-year statute. It runs from the date the
9 injury is sustained, in the case of damage to property,
10 which I assume this would be. If it isn't, I am sure
11 someone will address it.

12 But the suit was initiated in February of
13 this year. So transactions prior to February of 2013,
14 that is, the first three transactions with Blazingstar
15 and Structured Funding, wouldn't be subject to that.
16 And Blazingstar was not involved in any transactions
17 after February 26, 2013.

18 But at the moment I am persuaded that
19 Count 7 should be dismissed because -- in its entirety
20 because the Virginia Consumer Protection Act makes
21 certain fraudulent misleading practices illegal in the
22 context of a consumer transaction, which is then defined
23 in a certain way. I don't know whether they would
24 identify it as goods or services. But it does not apply
25 to any aspect of a consumer transaction, which aspect is

1 authorized under the laws or regulations of this
2 commonwealth.

3 And this was authorized under the laws of
4 this commonwealth by the orders of Judge Sword and the
5 other individual.

6 I think the Portsmouth Circuit Court's
7 approval of the transaction suggests strongly that the
8 transaction was authorized, and thus would be excluded
9 from the Virginia Consumer Protection Act coverage.

10 Now, tortious interference claim, which is
11 in Counts 8 and 9, with respect to Count 8, it's hard
12 for me to see how this is an interference with contract
13 relations. Generally, a tortious interference would be
14 an interference by these defendants in inducing a third
15 party to breach an existing contract.

16 These defendants didn't cause any third
17 party, in this case the settler, that was already
18 obligated to make payments, to cease making payments,
19 but simply agreed with Taylor that had the obligations
20 transferred to defendants rather than to Taylor, and
21 then paid Taylor a lump sum for those future payments.

22 As for the parents, Louise and Phillips, the
23 amended complaint doesn't allege that they were entitled
24 in their own right to any of the ongoing periodic
25 payments under the settlement agreement. Although they

1 were parties to the settlement agreement that created
2 the structured payments, it appears that any of their
3 direct financial interest or obligation under the
4 settlement agreement has already been satisfied. There
5 are no factual allegations that they retain an interest,
6 a contractual interest or actual contractual interest in
7 Terrence's payments.

8 I have a serious doubt whether the
9 assignment of Terrence's rights would constitute an
10 intentional interference with his performance. If you
11 look at the Restatement Second of Torts, Section 766,
12 the only performance aspect of the settlement agreement
13 was that Terrence dismissed his lawsuit and agreed not
14 to bring any other suits. I don't think it fits at all
15 here.

16 And with respect to Count 9, all of the
17 allegations relate to -- these are all that -- this is
18 the business expectancy count. They have to allege an
19 existence of a business relationship or expectancy, the
20 probability of future economic benefit, the defendant's
21 knowledge of a relationship or expectancy, with
22 reasonable certainty that absent the defendants'
23 intentional misconduct, the plaintiff would have
24 continued in the relationship or realized the
25 expectancy; and damages.

1 Plaintiffs seem to argue that Louise and
2 Phillip had an expectation based on the contract that
3 the structured settlement would cover the costs of
4 Terrence's medical expenses and living expenses for the
5 rest of his life, and that they would not have to
6 support him financially.

7 That expectation, they claim, the plaintiffs
8 claim has been interfered with or lost by the transfer
9 of Terrence's payments to defendants, because Terrence
10 spent all of the money he received as a part of these
11 transactions, and is obviously no longer entitled to
12 future periodic payments.

13 I don't think there is a cognizable business
14 expectancy here. To prove the existence of a business
15 expectancy, a party has to demonstrate an objective
16 expectation of future business. Mere proof of a
17 plaintiff's belief and hope that a business relationship
18 will continue is inadequate under the laws -- under the
19 Virginia Law, and that's reflected in the South Print
20 case at 208 Federal Appendix 249. It quotes a published
21 Virginia decision at 484 Southeast 2nd 892.

22 Louise's and Phillip's expectation that they
23 wouldn't have to support Terrence financially was not a
24 business expectancy. It was a hope.

25 And the amended complaint discloses no

1 allegations that this expectation was a guarantee of the
2 contract rather than a mere prediction or subjective
3 expectation about how Terrence would manage the money he
4 received, whether by the lump sum payment or even by the
5 structured payments in the future.

6 So I don't think that interference with
7 contract or business expectancy fits at all here.

8 In Counts 8 and 9, plaintiffs fail to allege
9 that defendants caused a third party to breach a
10 contractual relationship with plaintiffs. Plaintiffs
11 failed to allege a cognizable business expectancy that
12 defendant's actions interference with. And plaintiffs
13 failed to allege that absent defendant's conduct
14 plaintiffs would have continued to realize or would have
15 realized that expectancy.

16 Now we come to lack of personal jurisdiction
17 over Wadsworth. Now he is subject only to Counts 5, 6,
18 and 7, which I have already addressed in other ways.
19 But it's clear that, of course, that he is not subject
20 to jurisdiction unless he has minimal contacts here
21 under 8.01-328(1). He has got to fall within the
22 Long-Arm Statute. And if he does, then we have to
23 examine to see whether the reach of the long arm in this
24 situation would exceed the long arm's constitutional
25 grasp under the Due Process Clause.

1 And Virginia's Long-Arm Statute does extend
2 jurisdiction to the full extent permitted by due
3 process. Presumably what they are relying on
4 8.01-328(1), the first part of it, which is doing
5 business in Virginia.

6 So the question is whether the facts that
7 are alleged, the defendant can be said to have
8 purposefully availed himself of the privilege of
9 conducting activities in Virginia; and second, whether
10 the plaintiffs' claim arises out of those activities;
11 and third, whether the exercise of personal jurisdiction
12 would be constitutionally reasonable. That's applying
13 the analysis in the Consulting Engineers Corp case at
14 561 Federal 3rd.

15 It's clear, factually, so far, that
16 defendant didn't maintain any offices or agents in the
17 forum state. He didn't own property here.

18 What he did is he worked from his employer's
19 job and he made calls to Virginia and sent documents to
20 Virginia. Now Wadsworth was always in Florida, working
21 with Taylor who was in Virginia. And he sent documents
22 to him and had telephone calls with him, text messages,
23 faxes and communications.

24 But they were all, they were all
25 communications from Florida to West Virginia, not

1 Virginia. He didn't then, Plaintiff Taylor didn't then
2 reside in Virginia at the time these solicitations were
3 occurring. And Wadsworth didn't file any documents in
4 Virginia.

5 The contacts made, according to -- in
6 Wadsworth's view were contacts made by his employer,
7 were not done on Wadsworth's behalf; in other words, the
8 documents filed in Virginia.

9 I think it's clear that a defendant doesn't
10 exercise the privilege of conducting business in
11 Virginia when all the employee is doing is discharging
12 the duties of his employer as an employee.

13 Wadsworth wasn't encouraging Taylor to
14 execute documents that would be filed in Virginia or
15 making contracts with Terrence as an individual, as he
16 was an employee of Structured Asset Funding.

17 And it's clear, as the amendment complaint
18 suggests, that Structured Asset Funding prepared the
19 necessary paperwork to file transfer applications with
20 the Portsmouth County Circuit Court. And he was not the
21 principal of any agents conducting business in Virginia.

22 So at the moment I am doubtful that there is
23 a claim against -- or I am doubtful that personal
24 jurisdiction exists over Wadsworth.

25 So just to summarize briefly, I think

1 Count 1 much be dismissed pursuant to the Rooker Feldman
2 Doctrine.

3 Count 2, which is the West Virginia
4 Structured Settlement Procedure act, must be dismissed
5 for failure to state a claim. The West Virginia Act
6 isn't applicable to the transfer in issue here. It
7 doesn't provide for an express or implied right of
8 action anyway. It permits the filing of the action in
9 Virginia, even though the seller or the transferor
10 resides in West Virginia.

11 Count 3 would have to be dismissed because,
12 as I have already stated, there is no allegation of a
13 breach of a contractual -- of discretionary contractual
14 duty that should have been performed in good faith and
15 fair dealing. The activities alleged there are all
16 before a contract existed.

17 Counts 6 and 7 are the fraud claims, and I
18 have already said that those fail to meet both the
19 requirement of pleading fraud with particularity under
20 state and federal law.

21 Count 7, I have indicated that I don't think
22 this situation fits under the Virginia Consumer
23 Protection Act. And I have -- I have just addressed the
24 tortious interference.

25 Now I have taken the unusual step of

1 exposing to counsel what I am thinking, so that you can
2 address what I am thinking.

3 I am not insensitive to what the plaintiffs
4 are alleging. They are alleging: Look, we have a
5 vulnerable plaintiff. These people came in,
6 sweet-talked him, induced him and did all kinds of
7 things to get him to give up his future payments in
8 return for a lump sum, and our plaintiff went and
9 squandered this money. And everyone is upset about that
10 because the money was to take care of him for the rest
11 of his life. I understand that.

12 But on the defendants' side of the coin,
13 it's -- it was his to do with what he wanted. Now the
14 argument is that that violates the federal court order.
15 But I don't think that stops anything. That still
16 should go to whether or not that was an obstacle to what
17 Portsmouth did.

18 The Portsmouth Circuit Court found it
19 lawful. Maybe it construed the order that way. I don't
20 know.

21 But the time for -- the time for filing a
22 motion to show cause why somebody should be held in
23 contempt for violating a court order is long gone.

24 I might issue a sanction for that. I don't
25 know who I would sanction. Would it be the Portsmouth

1 Court? Would it be the Plaintiff Taylor? Would it be
2 the defendants? And the sanction would be paid to the
3 Clerk's Office. It wouldn't be paid to one party or
4 another. It would be a sanction for violating the court
5 order.

6 Now if -- and as I have said, if the
7 Portsmouth Court was misled or wasn't fully apprised of
8 all the pertinent facts, which I don't exclude that that
9 is a possibility, that should be taken to the Portsmouth
10 Court. They are the ones who were misled.

11 So I have disclosed essentially what I am
12 thinking. You all need to reflect on that.

13 And Mr. Rodriguez, how soon can you give
14 them a transcript for the usual fee?

15 THE REPORTER: They can get it tomorrow
16 morning.

17 THE COURT: You can't ask for anything
18 better than that, can you?

19 ATTORNEY EICHHORN: That works, your Honor.

20 THE COURT: And any reason why you couldn't
21 then -- the plaintiffs, since these rulings have gone
22 pretty much against the plaintiffs, if not entirely, why
23 you couldn't file something -- let's say that you don't
24 get it until Monday. You make whatever financial
25 arrangements you think are appropriate. I am going to

1 set dates. And you'll have to see what Mr. Rodriguez's
2 rates are.

3 But I see no reason why the plaintiffs could
4 not then submit a further memorandum addressing all of
5 these points, and any other points it wants to address
6 for a final time, a week from Monday, by the close of
7 business a week from Monday. And the defendants may
8 file, individually or jointly, a response to that by
9 Friday, close of business Friday. And I'll decide the
10 matter thereafter without further oral argument.

11 In the meantime, of course, I am going to
12 stay discovery until I decide these threshold issues.

13 I don't understand why the settlement order
14 cannot be found, but I am going to continue to explore
15 that situation.

16 And I'll be interested in seeing what you
17 file and what arguments you make as to why I have missed
18 the boat on this.

19 Yes.

20 ATTORNEY HOLMES: Your Honor, if I may.
21 Simply to advise the Court that prior to filing this
22 matter, I had requested from the Clerk's Office that the
23 original file from 1989 be recall from archives in order
24 to review it for --

25 THE COURT: It has been.

1 ATTORNEY HOLMES: -- settlement agreement.
2 The settlement agreement itself was not part of the
3 archival --

4 THE COURT: That's why she hasn't been able
5 to find it. Thank you for telling me that.

6 ATTORNEY HOLMES: Yes, your Honor. And,
7 your Honor --

8 THE COURT: So it was never filed?

9 ATTORNEY HOLMES: Your Honor, apparently
10 the --

11 THE COURT: Oh, the original settlement
12 agreement was.

13 ATTORNEY HOLMES: The original settlement
14 agreement. So the file --

15 THE COURT: But the order had to include, be
16 included in the file.

17 ATTORNEY HOLMES: Correct, your Honor. And
18 that order was signed by Judge Bryan.

19 THE COURT: Ah. Thank you.

20 ATTORNEY HOLMES: And as I recall from those
21 days, your Honor, the system --

22 THE COURT: You are too young to recall from
23 those days.

24 ATTORNEY HOLMES: Would that it were true,
25 your Honor.

1 -- the system used by Ms. Casey at that time
2 was not as, I would say, rigorous as the present system
3 used by the Court. And so with the Court's move from
4 its prior location to this one, I am sorry to report
5 that the Clerk's Office may be left with searching
6 through some boxes in the basement.

7 THE COURT: They have already started that.

8 ATTORNEY HOLMES: That is my understanding
9 as well, and with my apologies to Ms. Walker that that's
10 required.

11 THE COURT: Yes.

12 The note I received says, "Glenda was unable
13 to locate the settlement agreement." That's not what we
14 are looking for. So I've got to make it clear that we
15 are looking for the settlement order.

16 ATTORNEY HOLMES: Your Honor, again to
17 clarify, the order itself references the settlement
18 agreement --

19 THE COURT: It may be attached it.

20 ATTORNEY HOLMES: -- which, rather than
21 being attached as I hoped when I looked, instead it
22 simply referenced in and incorporated into the language
23 of the final dismissal order.

24 THE COURT: I see. So it should have been
25 maintained by the Clerk's Office.

1 ATTORNEY HOLMES: Correct, your Honor.

2 THE COURT: Yes. And I am going to continue
3 to have them search for it. They should find it.

4 ATTORNEY HOLMES: I am sure that they will
5 in time, your Honor.

6 THE COURT: But you should address in this
7 motion why that should -- why that's relevant, that is,
8 that provision that you have now informed me that says
9 nobody can change anything, that you have gotten from
10 somebody who was a lawyer back then who remembers that's
11 what it says, why that making any difference.

12 I mean, the people who violated that were
13 the Portsmouth Court and the parties thereto, which
14 include Taylor. He was maybe not a formal party, but he
15 certainly was invited to participate and received notice
16 and all of that, as the statute required.

17 So they are the ones who violated it, and I
18 don't see what that has to do with anything other than
19 if this Court is upset about that, it would issue a
20 sanction, an order to show cause why someone shouldn't
21 be held in contempt, maybe including your client, and
22 imposing a sanction. But I don't see how that gets to
23 the kind of remedy that you want.

24 ATTORNEY HOLMES: I understand the Court's
25 concerns and we will address them, your Honor.

1 THE COURT: And I don't want to suggest that
2 I think that this is, you know, this is not a situation
3 of, not entirely a situation of -- it's apparently not a
4 situation where the plaintiff didn't get what he
5 bargained for.

6 What it is, is a situation that you all say
7 he was vulnerable, he was taken advantage of, he got
8 what he bargained for, but he should never have agreed
9 to get that, and that it was very harmful to him and to
10 his family for him to agree to the lump-sum payment for
11 payments that would otherwise have supported him and his
12 daughter for years to come.

13 How old is he now?

14 ATTORNEY STONE: He was born in 1982.

15 THE COURT: All right. So, he is, yes --

16 ATTORNEY HOLMES: Thirty-three.

17 THE COURT: -- 33, 34 years old.

18 I thank counsel for your cooperation and
19 your briefs. Anything further from any party today?

20 ATTORNEY STONE: Your Honor, very briefly,
21 the further memorandum, what than page limitations do
22 you want us to employ?

23 THE COURT: The same page limitations that
24 apply in the local rule. You don't have to use 30
25 pages.

1 ATTORNEY STONE: Thank you.

2 THE COURT: In fact, I would be quite
3 surprised if you did use 30 pages. But I am not going
4 to limit you. I will read what you present.

5 Anything further in this matter today?

6 And I take it the persons sitting in the
7 courtroom are relatives of Mr. Taylor?

8 ATTORNEY STONE: Mr. Taylor and --

9 THE COURT: That's Mr. Taylor right there?

10 ATTORNEY STONE: Yes, your Honor.

11 THE COURT: All right. And the others are
12 his family members.

13 ATTORNEY STONE: Louise Taylor.

14 THE COURT: All right. I thank counsel for
15 your cooperation.

16 ATTORNEY STONE: Thank you, your Honor.

17 ATTORNEY ELLEDGE: Thank you, your Honor.

18 (Court recessed at 2:30 p.m.)

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CERTIFICATE

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motion hearing in the case of TERRENCE E. TAYLOR, et al., v. STRUCTURED ASSET FUNDING, LLC, et al.

I further certify that I was authorized and did report by stenotype the proceedings in said motion hearing, and that the foregoing pages, numbered 1 to 75, inclusive, constitute the official transcript of said proceedings as taken from my machine shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 8th day of May, 2015.

/s/
Michael A. Rodriguez, RPR/CM/RMR
Official Court Reporter